

JUL 25 1980

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

July 24, 1980

Senator William Faust
State Capitol Building
Lansing, Michigan

Dear Senator Faust:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended. You ask if a legislator's candidate committee may lease an automobile at the committee's expense. You also inquire whether the leasing of an automobile and automobile expenses may be charged against an officeholder's expense fund.

Section 6 of the Act (MCL 169.206) defines "expenditure" as payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of . . . the nomination or election of a candidate"

Section 3 of the Act (MCL 169.203) provides that an elected officeholder is a candidate for reelection to the same office.

A candidate committee is authorized to make expenditures in assistance of a legislator's renomination and reelection to office. If an automobile is being used to influence an election then the cost of leasing the vehicle may be paid from a candidate's campaign committee.

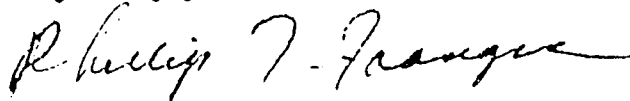
Section 49 of the Act (MCL 169.249) permits an elected public official to establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. Unreimbursed travel for legislative or constituent business is an expense incidental to a legislator's office. Consequently, the leasing of an automobile and automobile expenses may be charged against an officeholder expense fund to the extent that the expense is incurred on constituent or legislative business and is not otherwise reimbursed.

An officeholder expense fund is prohibited from making "contributions and expenditures to further the nomination or election" of the public official who established the fund pursuant to section 49. An officeholder who uses an officeholder expense fund to pay automobile expenses incidental to the office must be absolutely certain that monies from the fund are not used for the support of that person's campaign for office.

Senator William Faust
Page Two

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos". The signature is written in dark ink and is positioned above the printed name and title.

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

· M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48218

August 5, 1980

Ms. Mildred Meisner
P. O. Box 1276
Pontiac, Michigan 48056

Dear Ms. Meisner:

This is in response to your request for an interpretation of the Campaign Finance Act, 1976 PA 388, as amended ("the Act"), with respect to contributions of over \$100.00 from a checking account maintained by more than one person.

Specifically, you have requested a ruling that authorizes persons who hold a joint account to make a contribution of over \$100.00 with the contribution being prorated among the owners of the account for purposes of qualifying for matching funds pursuant to section 12(1) of the Act.

In a letter to William R. Lukens, the Department indicated that such a contribution may be prorated if both owners of the account sign the instrument representing the contributions. If the instrument is signed by only one of the owners of the account, the contributions may be prorated if a separate signed document is received from the other owner of the account. A copy of the letter to Mr. Lukens is enclosed.

This letter is informational only and is not a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos".

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cs

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 5, 1980

Mr. Daniel C. Krueger
County Clerk, Ottawa County
414 Washington
Grand Haven, Michigan 48417

Dear Mr. Krueger:

This is in response to your inquiry concerning the imposition of late filing fees pursuant to the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You indicate that late filing fees should not be assessed on campaign statements present in a filing official's mail on the first Monday following a Friday filing deadline. In advancing this position you assume the campaign statement was received by the filing official on Saturday rather than Monday. Two days of late filing fees would be eliminated under the facts and interpretation stated in your letter.

The Department is not empowered by the Act nor any other provision of law to adopt the interpretation you offer. There is no statutory basis on which to rest your proposal.

However, if arrangements are made to have mail delivered to your office on the Saturday following the due date (Friday), reports received on Saturday may be considered filed on Saturday. Thus, you should assess only \$10.00, rather than \$30.00, in late filing fees for those reports.

Amendatory legislation is pending which would impose late filing fees on the basis of business days and not calendar days as the Act requires presently. Moreover, the legislation, if enacted, would enable filing officials to waive late filing fees upon the showing of "good cause."

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos".

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48912

August 5, 1980

Mr. Marc T. Dedenbach
The Michigan Hospital Association
2213 East Grand River Avenue
Lansing, Michigan 48912

Dear Mr. Dedenbach:

This is in response to your request for a declaratory ruling concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to solicitation of various persons by a non-profit corporation. You state the following:

"Hospitals throughout the state are given support by volunteers in the community. These volunteers come together at the individual hospital level to form hospital auxiliaries. The volunteers who work in the hospital are not paid for the services they render. The hospital bylaws usually recognize the local auxiliaries as a part of the hospital's organizational structure. The majority of volunteers pay dues to the auxiliaries, which are used to support the auxiliary and the hospital. The auxiliaries do not pay dues to the MAHA."

"On a statewide basis, the auxiliaries are organized into six districts. Members of local auxiliaries elect auxiliaries to serve on the six district boards. The Michigan Association of Hospital Auxiliaries (MAHA) is the state level organization of auxiliaries. The district presidents, along with elected officers, serve on the Board of Directors of the MAHA. The MAHA and the district organizations are unincorporated, voluntary associations. A few of the local auxiliaries have incorporated."

"The purpose of the MAHA is to support the MHA, the American Hospital Association and local auxiliaries. The president of the MAHA is a voting member of the House of Delegates of the MHA. The House of Delegates is that body, made up of all the members of the MHA, which meets to pass on policy matters of MHA. The president of the MAHA is an ex-officio member of the MHA's Board of Trustees, attends the MHA board meetings and presents an annual report to the MHA Board."

"The MHA is a nonprofit corporation and has established an independent political committee, the Hospital Association Political Action Committee (HAPAC), which is registered with the Secretary of State."

"It is my understanding that contributions to HAPAC can be solicited from: 1) officers and directors of the MHA; 2) employees of the MHA who have a policy-making, managerial, professional, supervisory or administrative non-clerical responsibility; 3) members of the MHA who are individuals; 4) officers or directors of members of the MHA; and 5) employees of members of the MHA who have a policy-making, managerial, professional, supervisory or administrative non-clerical responsibility."

"I am requesting a declaratory ruling on the following questions:

1. Whether MHA can solicit contributions to HAPAC from the five categories of persons listed above?
2. Whether volunteers of local hospitals, represented on the MHA's House of Delegates, are 'members' of the MHA who are individuals, within the scope of P.A. 388 of 1976, even though they do not pay dues to the MHA?
3. Whether MHA can lawfully solicit contributions to HAPAC from individual auxiliaries?"

Section 55 of the Act (MCL 169.255) governs a nonprofit corporation's establishment of a separate segregated fund to be used for political purposes. This provision states:

"(1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

- (a) Stockholders of the corporation.
- (b) Officers and directors of the corporation.
- (c) Employees of the corporation who have policy-making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

- (a) Members of the corporation who are individuals.
- (b) Stockholders of members of the corporation.
- (c) Officers or directors of members of the corporation.
- (d) Employees of the members of the corporation who have policy-making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

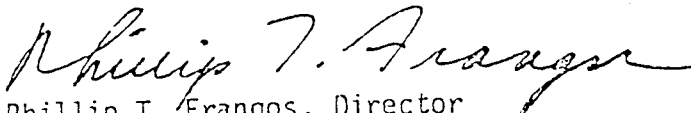
In response to your first question, therefore, MHA may solicit contributions to HAPAC from the five categories of persons you list. However, the knowledge that you may solicit from the above list is of little use unless you have a definition of the term "member." The latter term is not defined in the Act; the Department cannot determine MHA's membership without further information from you.

Similarly, the remaining questions cannot be answered without this additional information since the response to these two questions is dependent on the definition of "member." It should be noted, however, that nothing in your request claims that the auxiliaries are members of the MHA. You only claim that the president of MAHA is a voting member of the House of Delegates of the MHA. In the absence of additional information from you, it does not appear that the auxiliaries are members of the MHA. Based on the information submitted by you, it does not appear possible for HAPAC to solicit the auxiliaries.

Section 120 of the General Corporation Act (MCL 450.120) states, "Membership in all non-profit corporations shall be governed by such rules of admission, retention, and dismissal, as the articles or by-laws shall prescribe: Provided, that all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members." Accordingly, whether an individual shall be considered a "member" for solicitation purposes depends on the rules prescribed by the articles or by-laws of MHA. It is necessary to submit the articles of incorporation or by-laws regarding membership in the Michigan Hospital Association in order that your request for a declaratory ruling may be properly addressed.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 5, 1980

Mr. Paul Younglove
9063 Joseph
Maybe, Michigan 48159

Dear Mr. Younglove:

This is in response to your request for a declaratory ruling pursuant to the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, concerning late filing fees assessed against yourself, Anthony B. Lieto, Thomas R. Hilyard, and Kris Rath.

You indicate the four of you filed petitions for various village elective offices on December 21, 1979. You asked the village clerk if you needed to file any other papers and were advised no other filings were necessary. Then on January 31, 1980 the village clerk notified you that filings were required under the Act. You filed your statements of organization by the next day and were subsequently notified that each of you owed \$300.00 in late filing fees. You enclosed a statement from the Maybee Village Clerk indicating prior to January 30, 1980 she did not know candidates were required to file statements of organization. You ask if, considering these circumstances, your late filing fees may be forgiven.

Section 21(1) of the Act (MCL 169.221(1)) provides that "a candidate, within 10 days after becoming a candidate, shall form a candidate committee." It is impossible to positively determine when you became candidates from the information contained in your letter. "Candidate" is defined in section 3(1) of the Act (MCL 169.203(1)), which provides, in the relevant part, as follows:

"Candidate means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an

Mr. Paul Younglove
Page two
August 5, 1980

elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

Under this definition, you certainly became candidates no later than December 21, 1979, the date you filed for the various village offices. Thus, each of you was required to form a candidate committee no later than December 31, 1979.

Section 24 of the Act (MCL 169.224) states, in part:

"(1) A committee shall file a statement of organization with the filing officials designated in section 35 to receive the committee's campaign statements. A statement of organization shall be filed within 10 days after a committee is formed. . . . A person who fails to file a statement of organization required by this subsection, shall pay a late filing fee of \$10.00 for each day the statement remains not filed in violation of this subsection not to exceed \$300.00. A person who is in violation of this subsection by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor and shall be fined not more than \$1,000.00."

Therefore, you were each required to file a statement of organization within ten days of the day the committee was formed, but not later than January 10, 1980.

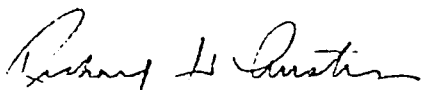
The filing official determines when the late filing fee begins to accumulate by checking item 6, "Date Committee was formed," on the committee's statement of organization. As long as the item 6 date is not later than ten days after the person became a candidate, the late filing fee is computed from the date provided by the candidate in item 6. You will need to determine if your late filing fees were properly computed. If the fees were incorrectly computed, the Monroe County Clerk should be informed so they may be corrected.

The Act does not give anybody, including the Secretary of State, the authority to forgive or cancel late filing fees regardless of the extenuating circumstances or good intentions on the part of the committee. Therefore, your request for forgiveness of the fees cannot be complied with by the Department of State.

Mr. Paul Younglove
Page three
August 5, 1980

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request. .

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard H. Austin".

Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48218

August 6, 1980

Mr. Leon D. Nobes
2033 Crozier Avenue
Muskegon, Michigan 49441

Dear Mr. Nobes:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to paid statements you would like to place in the media.

You indicate you do not know if you will run for office in the next election but you would like to make some public statements about a person who has been a candidate for election in the past, who you expect will be a candidate in a future election, and who has recently received an appointment. You would also like to make some public statements regarding the Governor and certain of his actions. You inquire as to the reporting requirements you must comply with if you make these statements by means of paid media messages.

Since the facts and questions you state are quite general in nature, this response must also be general. "Candidate" is defined (in part) by section 3(1) of the Act (MCL 169.203(1)) as follows:

"Candidate" means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only." (Emphasis supplied)

The identification requirements for printed matter and media advertisements are set out in section 47 of the Act (MCL 169.247):

"Sec. 47. (1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter."

(2) A radio or television paid advertisement having reference to an election, a candidate, or ballot questions shall identify the sponsoring person as required by the federal communications commission, shall bear the name of the person paying for the advertisement, and shall be in compliance with the following:

(a) If the radio or television paid advertisement relates to a candidate and is an independent expenditure, the advertisement shall contain the following disclaimer: "Not authorized by any candidate."

(b) If the radio or television paid advertisement relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate to which it is related, the advertisement shall contain the following disclaimer: "Authorized by _____."

(Name of candidate or name of candidate committee)

(3) If the printed matter relating to a candidate is an independent expenditure which was not authorized in writing by the candidate committee of that candidate, the printed matter shall contain the following disclaimer: "Not authorized by the candidate committee of _____."

(candidate's name)

The size and placement of the disclaimer shall be determined by rules promulgated by the secretary of state. The rules may exempt printed matter and certain other items such as campaign buttons or balloons the size of which makes it unreasonable to add an identification or disclaimer, from the identification or disclaimer required by this section.

(4) A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both."

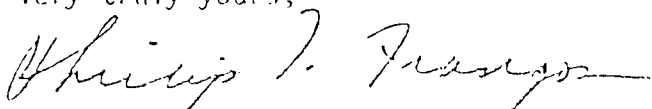
You must apply these sections to yourself in purchasing media messages. If you are a "candidate," any purchased printed matter or advertising having reference to you must be identified as required in section 47. It must state: "Paid for by _____."

(name of your committee)

Similarly, if another person is a "candidate," any printed matter or advertising you pay for having reference to that person must contain one of the three disclaimers set out in subsections 2(a), 2(b), and 3 of section 47.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 6, 1980

Honorable Francis R. Spaniola
Michigan House of Representatives
Roosevelt Building
Lansing, Michigan 48909

Dear Representative Spaniola:

This is in response to your inquiry regarding the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You state you have been supplied with state highway maps by the Michigan Department of Transportation as part of the quota given to the Legislature for distribution. You indicate, "several service station owners have asked if I could make available a number of these maps with my insignia for free distribution."

You have enclosed a state highway map with a copy of your insignia attached. The insignia reads as follows:

"Compliments of
Your
State Representative
FRANCIS R. 'BUS' SPANIOLA
87th District"

The state emblem is affixed to the left of the inscription. The entire insignia is in the form of a sticker measuring 1" x 2-3/4".

You inquire as to the provisions of the Act which are applicable to the above facts.

Two questions must be addressed:

- (1) How may distribution costs of the maps be paid consistent with the Act?
- (2) Is distribution of the maps by service station owners permitted by the Act?

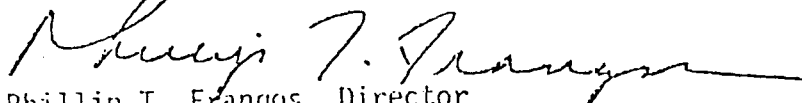
Distribution of highway maps as described in your letter is an activity incidental to the holding of office. Costs incurred for distributing maps are not made for the purpose of influencing an election. Any allowance authorized by the Legislature may be used. Alternatively, such costs may be paid with disbursements from an officeholder's expense fund created pursuant to section 49 of the Act (MCL 169.249), or with an officeholder's personal funds.

Honorable Francis R. Spaniola
Page Two
August 6, 1980

The second question arising from your factual presentation is whether a service station which makes the maps available is rendering an in-kind donation of services thereby requiring establishment of an officeholder expense fund to report the donation. The Act requires the reporting of measurable receipts and disbursements of an officeholder expense fund. However, in the situation you describe this does not appear to be applicable since making maps available in a service station does not have an ascertainable value.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,


Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 4891

August 6, 1980

Mr. Douglas K. Weiland, Treasurer
Committee to Re-Elect Michael J. Carr
3314 Sherwood Drive
Flint, Michigan 48503

Dear Mr. Weiland:

This is in response to your inquiries concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

Specifically, you state in connection with a May 20, 1979 fundraiser, the Committee to Re-Elect Michael J. Carr received funds by selling advertising space in a printed program book. After selling the advertisements, you discovered one of the purchasers of advertising space was an incorporated business.

Your first question is whether the sale of advertising space constitutes a contribution as defined by the Act or whether the sale of goods or services is outside the definition.

Section 4(1) of the Act (MCLA 169.204(1)) defines "contribution" as a "payment, . . . expenditure, (or) . . . payment for services . . . made for the purpose of influencing the nomination or election of a candidate . . ." Since money actually changes hands in the type of transaction you describe, the person who purchases advertising space makes an expenditure or a payment for a service. The printed program is a book which favorably presents the candidate to its readers and the sale of advertising is a source of campaign funds for the candidate. The program, by itself, may be considered a fundraiser. Thus the printed program has two purposes -- it raises money for the candidate and shows to the readers of the program the support the candidate has in the community. The two purposes influence the nomination or election of the candidate. Therefore, the purchase of advertising space constitutes a contribution.

In your second question, you ask if it is permissible to "receipt" the corporate contribution to an officer/holder expense fund. Section 54(1) of the Act (MCL 169.254(1)) expressly prohibits a corporation from making a "contribution" to a committee. None of the exceptions in that provision or section 55 (MCL 169.255) apply to your factual situation. As discussed previously, the purchase of an advertisement constitutes a contribution. Since it is improper for your candidate committee to receive this corporate contribution, it would also be improper for the committee to accept the contribution and pass it along to an officer/holder expense fund. Additionally, it should be noted section 49(1) (MCL 169.249(1)) precludes usage of the officer/holder expense fund for furthering the nomination or election of the public official.

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Mr. Douglas K. Weiland

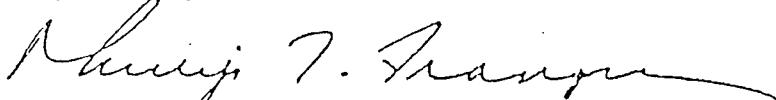
Page Two

August 6, 1980

Finally, you inquire as to how a committee can rectify the situation where it has received a corporate contribution under the above circumstances. The definition of "contribution" in section 4 provides an offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A return of the contribution does not eliminate the violation, but it may evidence a willingness on the part of the committee to abide by the intent of the Act. Whether or not it does, depends on the facts of the case.

This response may be considered as informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

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MISSISSIPPI DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 6, 1980

Mr. Wayne M. Deering
1511 Portage Street
Kalamazoo, Michigan 49001

Dear Mr. Deering:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You ask four questions:

- 1) Does the definition of "candidate committee" include a federal candidate committee?
- 2) Is a state candidate committee prohibited from contributing to a federal candidate committee?
- 3) Does the Act prohibit the transfer of funds by one individual's candidate committee to another individual's candidate committee for the purpose of reimbursing the latter committee for joint expenditures, or for the purchase of materials and/or services from the latter committee?
- 4) Is the answer to the third question the same, if one of the committees is a federal candidate committee?

In response to your first question, section 3 of the Act (MCL 169.203) provides an individual holding or seeking an elective office is required to form a candidate committee. Section 5(2) (MCL 169.205(2)) defines "elective office" to mean public office filled by an election, except for federal offices. Consequently, a candidate for federal office, if not holding or seeking an "elective office" as defined in the Act, is not required to form a candidate committee pursuant to the Act. In the instance where an individual seeks both federal and state office, Rule 27 (1977 AACS R169.27) states that "a committee supporting a candidate for federal office and a candidate for office in this state shall file a statement of organization for the committee of the candidate for office in this state." Therefore, the definition of "candidate committee" does not include a federal candidate committee.

Mr. Wayne M. Deering

Page 2

August 6, 1980

Regardless of whether a state candidate committee and a candidate committee registered pursuant to federal law support the same person or different people, funds may not be transferred from the former to the latter. "Contribution" is defined in section 4 of the Act (MCL 169.204) as a transfer "made for the purpose of influencing the nomination or election of a candidate." "Expenditure" is defined similarly in section 6 (MCL 169.206). Section 3(1) (MCL 169.203(1)) ties the definition of "candidate" to "elective office." As noted previously, "elective office" does not include a federal office. Because a disbursement from a state candidate committee to a federal candidate committee is not an "expenditure" under section 6 and is not a transfer upon dissolution of the committee pursuant to section 45 of the Act (MCL 169.245), it cannot be made by a Michigan "candidate committee." A previous declaratory ruling made to State Senator Mitch Irwin (May 29, 1979) discusses this issue in detail. A copy is attached for your convenience.

As to your third question, in a September 20, 1978 letter to Mr. Michael W. Hutson, the Department indicated the Act permits joint fund raising events in which expenses relating to the fund raising event are payable through reimbursements of one participating candidate committee by another participating candidate committee. Guidelines to which joint fund raising events are subject were detailed in that letter. Enclosed you will find a copy of the Hutson letter. The same considerations which apply to joint fund raising events also apply to joint expenditures such as shared advertising.

It should be emphasized section 44(2) of the Act (MCL 169.244(2)) prohibits a candidate committee from making a contribution to another candidate committee. Consequently, it is imperative that no candidate bear a disproportionate share of a joint expenditure. Such a disproportionate share could constitute an illegal contribution to each of the participating candidate committees. Reimbursement must be made promptly within the period specified in the written agreement.

The second part of your third question concerns the purchase of materials and/or services from a candidate committee by another candidate committee. There is nothing in the Act which prohibits such a transaction. However, it must be emphasized the sale and purchase must be at fair market value so as to avoid the making of any illegal contribution from one candidate to another.

With respect to your fourth question, the answer depends upon which committee is being benefited by the arrangement. As indicated in the answer to your second question, it is improper for a state candidate committee to make a contribution to or an expenditure for a federal committee. Therefore, a state candidate committee may not pay more than its fair proportion of joint expenses and a federal committee may not receive more than its fair proportion of the benefits of the joint venture. But the Act does not prohibit a federal committee from contributing to a state candidate. Section 52 of the Act (MCL 169.252) limits the amount any person, including a committee, may contribute to candidates

Mr. Wayne M. Deering

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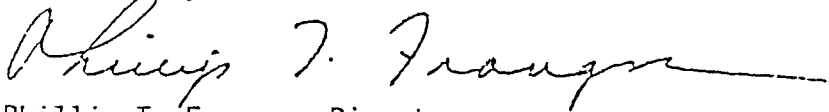
August 6, 1980

for state elective offices. In addition, sections 28(3) and 42(2) of the Act (MCL 169.223(3), MCL 169.242(2)) require a state committee which receives out of state funds in excess of \$20.00 to obtain a certified statement which includes certain information from the contributor. And if the contribution or expenditure by the federal entity totals \$200.00 or more in a calendar year, the entity must register as a committee pursuant to the Act. Of course, federal law should be examined for its ramifications on a transfer from a federal committee to a state candidate committee.

Thus if federal law permits contributions to state candidate committees, the federal committee may pay more than its fair proportion of joint expenses, receive less than its fair proportion of benefits, or sell materials or services at less than fair market value as long as these contributions are properly reported and do not exceed the section 52 limitations.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 6, 1980

Mr. Robert J. Kauflin
Attorney at Law
Two Crocker Boulevard
Mount Clemens, Michigan 48043

Dear Mr. Kauflin:

You have requested on behalf of four candidates a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to cash contributions made at a joint fundraising event.

Specifically, you indicate that you have been asked to serve as treasurer for four circuit court judges who will be seeking reelection in 1980. These candidates propose to conduct a joint fundraiser.

In keeping with the guidelines for conducting joint fundraisers, previously established by the Department in a letter addressed to Mr. Michael W. Hutson and dated September 20, 1978, you state that prior to the event the candidates will execute a written agreement establishing, among other things:

- "A. The exact share of contributions to be assigned to each committee from contributions received from the event shall be twenty-five percent (25%).
- B. The proportional share of expenditures to be allocated to each committee shall be twenty-five percent (25%).
- C. A joint account (in the name of the joint committee) constituting a 'secondary depository' shall be set up in a proper depository for deposit of all contributions from the joint fundraising event.
- D. One of the candidate committees shall be designated to pay all expenses of the joint fundraising event as they arise.
- E. Each candidate committee shall reimburse the designated candidate committee for their proportionate share of the expenses attributable to the joint fundraising event.
- F. The joint committee shall pay to each candidate committee, within a reasonable time, their proportionate share of the contributions."

Mr. Robert J. Kauflin
Page Two
August 6, 1980

You also state all advertising, either before or at the event, will indicate that the event is a joint fundraiser, the names of the candidates involved, the office sought by each candidate, the agreed share of each contribution to be allocated to each candidate, and the manner of writing checks or other written instruments.

Finally, you indicate each contribution to the joint fund raising event will be \$60.00, and each candidate's proportional share will be \$15.00. It is your belief that many contributors "will pay cash at the door on the evening of the event."

You ask whether acceptance of a \$60.00 cash contribution violates section 41(1) of the Act (MCL 169.241(1)) which provides (in part):

"A person shall not make or accept any single contribution of \$20.01 or more in cash nor make or accept any single expenditure of \$50.01 or more in cash. Contributions of \$20.01 or more and expenditures of \$50.01 or more, other than an in-kind contribution or expenditure, shall be made by written instrument containing the names of the payor and the payee."

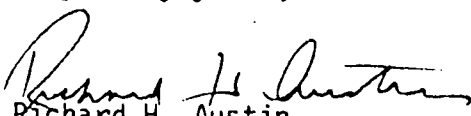
It is your opinion that acceptance of \$60.00 in cash does not violate the Act where the actual share of the contribution received by each candidate is \$15.00, and each contributor is fully informed of this fact by advertising or other communications. However, section 41, when read in conjunction with section 11(1) (MCL 169.211(1)), contradicts your position.

As noted above, section 41 prohibits any "person" from accepting a contribution of \$20.01 or more in cash. "Person" is defined in section 11 as including any "organization or group of persons acting jointly."

Accordingly, those who act jointly for the purpose of conducting a fundraising event are a "person" within the meaning of the Act, and as such may not accept contributions of \$20.01 or more in cash.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Very truly yours,


Richard H. Austin
Secretary of State

RHA/jmp

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

September 4, 1980

Mr. Leon D. Nobes
2033 Crozier Avenue
Muskegon, Michigan 49441

Dear Mr. Nobes:

This is in response to your inquiry concerning requirements of the Campaign Finance Act, 1976 PA 388, as amended ("the Act"), for reporting filing fees in lieu of submitting nominating petitions.

You state you paid a \$100.00 filing fee to the county clerk when you filed as a candidate; this fee was paid in lieu of filing petitions. You indicate the fee will be returned provided you receive the statutorily prescribed number of votes but, of course, you will not know this until the election is over. In addition, you have paid \$130.00 in late filing fees pursuant to the Act.

You ask whether your candidate committee must report these disbursements as "expenditures" on the committee's campaign statements. In addition, you inquire as to how you are to report any reimbursement of your filing fee if it is refunded subsequent to the filing of your "last report."

Section 26 of the Act (MCL 169.226) requires all "expenditures" to be reported by a committee. Section 6(1) (MCL 169.206) defines "expenditure" to include a payment of anything of ascertainable monetary value made for the purpose of influencing an election. Fees paid in lieu of nominating petitions and fees paid as a penalty for not filing reports when required are expenditures in the assistance of the nomination or election of a candidate and must be reported as "expenditures" in the committee campaign statements.

With respect to receiving a refund of a fee after filing your "last report," if by "last report" you mean the postprimary campaign statement or the postgeneral campaign statement, you should report the refund as an "other receipt" on any subsequent campaign statement. If by "last report" you mean your committee dissolution statement, you should amend that report to reflect the refund as an "other receipt." This has the effect of reducing the total amount expended in your campaign.

Mr. Leon D. Nobes
Page two

This response may be considered as informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48213

September 4, 1980

Mr. Anthony Raduazo
Assistant City Attorney
161 West Michigan
Jackson, Michigan 49201

Dear Mr. Raduazo:

This is in response to your inquiry concerning the Campaign Finance Act, 1976 PA 388, as amended (the "Act").

Specifically, you ask whether a home rule city, or municipal corporation, may make expenditures in support of a local ballot question without violating the Act.

Corporate contributions and expenditures are governed by sections 54 and 55 of the Act (formerly section 95 of 1975 PA 227). Pursuant to section 54 (MCL 169.254) a corporation may not make a contribution or expenditure except as provided in sections 54 and 55. Of particular relevance to your inquiry are subsections (3) and (4) of section 54, which provide for limited corporate activity with respect to ballot questions.

Section 54(3) of the Act (MCL 169.254(3)) provides:

"(3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of \$40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question." (Emphasis supplied)

Thus, if a municipal corporation is created for political purposes, it may contribute to ballot question committees without regard to the spending limitation found in section 54(3). Otherwise, it may contribute to ballot question committees, but such contributions may not exceed \$40,000.00.

"Corporation formed for political purposes" is not defined in the Act, and Michigan case law is of little value in determining whether a municipal corporation is within the term's meaning. However, Professor McQuillan, in his treatise on municipal corporations, states:

Mr. Anthony Raduazo
Page Two

"Strictly speaking, a public corporation is one that is created for political purposes only, with political powers to be exercised for purposes connected with the public good in the administration of civil government . . . All municipal corporations are public corporations, but all public corporations are not municipal corporations."
(Emphasis supplied) 1 McQuillan, Municipal Corporations, (3d ed), §2.03, p 130.

Similarly, 17 Michigan Law & Practice, Municipal Corporations, §1, p 8, defines "municipal corporation" as follows:

"It is, in short, a public corporation, created by the government for political purposes, and having subordinate and local powers of legislation." (Emphasis supplied)

Other secondary authorities, including 17 Callaghan's Michigan Civil Jurisprudence, Municipal Corporations, §1, p 430, concur in this definition.

It must be concluded, therefore, that a municipal corporation is a "corporation formed for political purposes" and, consequently, is not subject to the limitations found in section 54(3).

In addition to section 54(3), section 54(4) of the Act (MCL 169.254(4)) permits a corporation to make an independent expenditure "in any amount for the qualification, passage or defeat of a ballot question." If such expenditures total \$100.01 or more, the corporation must file a report of an independent expenditure within 10 days pursuant to section 51 (MCL 169.251). If the expenditures total \$200.00 or more, the corporation must register as a ballot question committee and will be subject to all of the reporting requirements of the Act.

Pursuant to the above, a home rule city may make a contribution or an expenditure in support of a local ballot question without violating the Campaign Finance Act. However, it is well established that a municipal corporation possesses only those powers granted to it by the state. Accordingly, there may be other statutory or constitutional provisions which would prohibit the use of public money for political purposes.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 489-8

September 15, 1980

Mr. Patrick C. Hancock, Jr.
1625 Meadow Lane
Wolverine Lake, Michigan 48088

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended ("the Act") to an individual who is nominated as a candidate by the village council pursuant to the village charter.

You state that you gave a written authorization to the filing officer to have your name appear on the ballot since an insufficient number of nominating petitions were filed.

Specifically, you ask if under these circumstances you qualify as a "candidate" subject to the reporting requirements of the Act.

Section 3(1) (MCL 169.203(1)) states in pertinent part:

"'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

According to the information in your letter, you did not file a fee, affidavit of incumbency or nominating petition for elective office; nor were you nominated by a party caucus or convention and certified to the appropriate filing official; nor did you receive a contribution or make an expenditure to influence your election to public office; nor were you appointed to an elective office.

Mr. Patrick C. Hancock, Jr.
Page Two

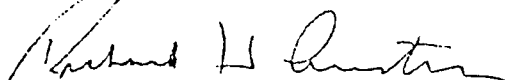
A persuasive argument could be made that you became a "candidate" when you authorized the village clerk to place your name on the ballot. Such an authorization could be considered to be equivalent to filing a nominating petition. Reading the Act in this way would certainly correspond to the common sense belief that a person whose name is on the ballot is a candidate.

As you point out, however, section 3 does not specifically include your fact-situation in the definition of the term "candidate." A failure to file a statement of organization not only involves late filing fees but also includes the possibility of a criminal prosecution if it extends for more than 30 days. The general rule is that penal provisions of a statute are to be read strictly.

In the fact situation you present there is no language in section 3 which specifically requires a candidate appointed by the village council to run for village office to file a statement of organization. However, section 3 does mandate the filing of a statement of organization when a contribution is received, an expenditure is made or the person becomes an officeholder.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,



Richard H. Austin
Secretary of State

RHA:lr